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In The
Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1180

DIVISION OF VOCATIONAL REHABILITATION, DEPARTMENT OF HEALTH AND REHABILITATIVE SERVICES, STATE OF FLORIDA and DIVISION OF RISK MANAGEMENT, DEPARTMENT OF INSURANCE, STATE OF FLORIDA,

Petitioners,

vs.

WILBUR KENYARD THOMAS and INDUSTRIAL RELATIONS COMMISSION, STATE OF FLORIDA,

Respondents.

PETITIONERS' REPLY BRIEF

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For a defendant in a litigated matter to win its case but be forced to try it again, de novo, simply because the device recording the testimony failed is bad enough, but for the appellate courts of a State, in this instance Florida, to maintain two different standards—one in civil cases and another in workmen's compensation cases—is even worse. In essence

respondent Thomas asserts that the dual standards are proper because a workmen's compensation hearing is an administrative procedure and benefits from a statutory provision that such hearings shall be reported.

However, the Supreme Court of Florida has several times held to the effect that in workmen's compensation cases a Judge of Industrial Claims is on a par with a Circuit Judge and that the Industrial Relations Commission is at the level of a District Court of Appeal.

In *Pierce v. Piper Aircraft Corporation*, 279 So.(2d) 281 (1973), the Supreme Court of Florida in a unanimous decision stated:

> "In 1971, the Industrial Relations Commission began a new era when the Governor reorganized it into the fashion of a court. Legislative sanction was given to this reorganization by Section 20.17(7), Florida Statutes, F.S.A., which creates an Industrial Relations Commission, providing, in pertinent part,
>
> '(7) There is created within the department of commerce an industrial relations commission to consist of a chairman and two other members all to be appointed by the governor, with the advice and the consent of the senate, and all to serve full time. Not more than one appointee shall be a person who, on account of his previous vocation, employment, or affiliation, shall be classified as a representative of employers; and not more than one such appointee shall be a person who, on account of his previous vocation, employment, or affiliation, shall be classified as a representative of employees. *Each appointee shall have the qualifications required by*

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law for circuit judges. . . .
(emphasis supplied)'

The Commissioners are now required to be full-time and to have been members of The Florida Bar for at least five years. They have research assistants and operate much like our District Courts of Appeal. Also, Judges of Industrial Claims (formerly Deputy Commissioners) have consequently been elevated in the sphere of workmen's compensation to a status somewhat akin to circuit judges. The process from the time the claim is filed through the time petition for writ of certiorari is filed with this Court has become more judicial in nature since the 1971 reorganization. In view of these facts, particularly the fact that the Commissioners are now full-time lawyers, we feel compelled to reevaluate our prior decisions of Ball v. Mann, supra, Hardy v. City of Tarpon Springs, supra, and Brown v. Griffin, supra, respecting requirements imposed upon the Judge of Industrial Claims in making his findings of fact. Recognizing the tremendous magnitude of the caseload on Judges of Industrial Claims and in light of the new posture of the Commission, we have decided to reexamine the stringent requirements for findings of fact set forth in the above cited decisions of this Court. We now hold the Judge of Industrial Claims need make only such findings of ultimate material fact upon which he relies, as are sufficient justification to show the basis of an award or a denial of the claim."

In *Scholastic Systems, Inc. v. LeLoup*, 307 So.(2d) 166 (1975), the Supreme Court of Florida further stated:

"We recently treated the IRC as a judicial body in our opinion at 285 So.2d 601 (Fla. 1973), adopting its

Workmen's Compensation Rules of Procedure. In our opinion we delineated the review of workmen's compensation cases by the IRC as 'judicial' and expressly recognized the judicial nature of its function. The federal court system has both 'Article I courts' and 'Article III courts,' an example of the former being the tax court. A body may be a 'court' without being named within the constitutional article dealing with the judiciary (in the case of our state constitution, Art. V), so long as it fulfills the requirements making it a judicial body of review. Our task is to determine what *qualities* are necessary in order for a body exercising judicial functions to meet constitutional requirements. Black's Law Dictionary, Rev. 4th Ed., informs us that such a body is: (p. 425)

> 'A tribunal officially assembled under authority of law at the appropriate time and time, for the administration of justice. In re Carter's Estate, 254 Pa. 518, 99 A.58.
>
> 'An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority, Isbill v. Stovall, Tex.Civ.App., 92 S.W. 2d 1067, 1070.'

and further at p. 426 as:

> '. . . having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge,

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68 Okl.256, 173 P.646,647.'

The term 'judicial function' is defined by Ballentine's Law Dictionary as: (p. 685)

'A function exercised by the employment of judicial powers.'

And in turn, 'judicial power' is defined as: (p. 686)

'That part of the sovereign power which belongs to the courts or, at least, does not belong to the legislative or executive department.'

Measured by these standards, the Industrial Relations Commission easily fits within these definitions as a judicial tribunal meeting constitutional requirements."

* * *

"In addition to the statutory provisions of F.S. § 20.17(7) noted by Mr. Justice Roberts in the above quote, we would further point out that F.S. § 440.44(4) provides: 'No person shall be appointed judge of industrial claims who is not an attorney-at-law admitted to practice in this state.' and that the recently concluded session of the Legislature increased the salary of the members of the Industrial Relations Commission so that it is now equivalent to that paid to judges of the district courts of appeal, by amending F.S. § 440.441. This same act (Ch. 74-363, Senate Bill 873) also amended (F.S. § 20.17(7) to provide that each appointee to the Industrial Relations Commission 'shall have the qualifications required by law for judges of the district courts of appeal,' rather than those of circuit judges as previously required, thus further 'upgrading' the status of the IRC to the level of an appellate court.

> All of the provisions make eminently clear the legislative intent to elevate the status of the IRC to that of a judicial body. That intent has been studiously carried out and its able 'judges' have been most carefully screened and chosen for the highest qualifications in this specialized field of the law. The IRC now occupies a position in the structure of our state government equivalent to the 'Article I' courts found in the federal system. The lack of the word 'court' in its title is irrelevant; the Board of Tax Appeals was no less a judicial body before its title was changed to that of 'Tax Court of the United States.' As Shakespeare said: 'What's in a name? That which we call a rose by any other name would smell as sweet.' We conclude, then, that whatever its title, the Industrial Relations Commission fulfills the requirements of a judicial body of review."

Again, in *Colvin v. State, Department of Transportation,* 311 So.(2d) 366 (1975), the Supreme Court of Florida expressed the following:

> "Where the IRC[1] is placed on the level of an 'appellate court' in the review of JIC[2] actions, as it has been by our holding in *Scholastic Systems,* it follows as with DCA[3] appeals that the actions of the 'trial court' (JIC) arrive in the appellate court (IRC) with a presumption of correctness. JIC findings and awards or denial

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1 IRC is Industrial Relations Commission

2 JIC is Judge of Industrial Claims

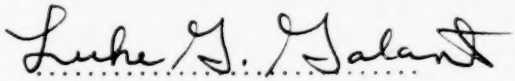
3 DCA is District Court of Appeal

> thereof can be overthrown only if not well founded under applicable legal principles, which would include a misapplication of applicable law, or upon a showing of a lack of competent evidence to support the findings or the ruling of the trial judge. IRC affirmance when there is such a lack of evidence, or reversal where the evidence is in fact sufficient, would constitute a 'departure from the essential requirements of law' which would vest jurisdiction for certiorari in the Supreme Court. It is upon the latter basis that this review has been granted.
>
> [3] The IRC, like the DCA, cannot be permitted to substitute its judgment on matters of discretion where there is sufficient proof in the record to support the trial judge's findings and rulings, even though the appellate view of the matter might have been different had the IRC been in the position of the trial judge. Applying this rule to the present case, it is apparent that IRC has fallen into that temptation which has in the past befallon appellate courts, of substituting its 'better judgment' for that of the 'errant trial judge' which is not permitted."

In view of the foregoing it is urged that to apply a different standard in workmen's compensation hearings from that found in civil trials is a denial of equal protection, over and above a denial of due process.

It should also be pointed out that *Liebe v. Morris, Lieb, Inc.* and *Wardell v. Tropicana Products, Inc.*, relied upon by respondent Thomas arose before the Judge of Industrial Claims and the Industrial Relations Commission were "upgraded."

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that copy of the foregoing has been furnished to Edward A. White, Esquire, by mail, this 1st day of April, 1976.

Attorney